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September 2, 2003

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

SEP 02 2003

Part of
Public Record

Re: Docket No. 42081, *Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P.*

Dear Secretary Williams:

Enclosed for filing please find an original and ten (10) copies of the Answer of CF Industries, Inc. to Kaneb's Opposition to Intervention. Please date stamp the extra copies of this cover letter and the filing and return them to our messenger. Thank you for your assistance in this matter.

Sincerely,


Mitchell F. Hertz



Chicago

London

Los Angeles

New York

San Francisco

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD



DYNO NOBEL INC.,
Complainant

v.

KANEB PIPE LINE PARTNERS, L.P.
Defendants.

Docket No. 42081

ANSWER OF CF INDUSTRIES, INC.
TO KANE B'S OPPOSITION TO INTERVENTION¹

On August 1, 2003, pursuant to 49 C.F.R. § 1112.4 (2002), CF Industries, Inc. ("CF Industries") petitioned to intervene in *Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P.*, Docket No. 42081 ("Complaint"). CF Industries has an interest in this proceeding because it is one of the largest shippers on Kaneb's² pipeline; it has a rate prescription in effect on Kaneb's pipeline; and it, like Dyno Nobel Inc. ("Dyno Nobel"), is subject to Kaneb's higher rates.

In addition, CF Industries intervened in the captioned case to protect its interests in another pending proceeding. CF Industries recently filed its own complaint against Kaneb in Docket No. NOR 42084 ("CF Industries' Complaint"). CF Industries' Complaint deals with a narrow legal issue – whether Kaneb may change a rate prescribed by the Surface Transportation Board ("Board") without prior Board approval. That same issue, along with several others, was raised in Dyno Nobel's Complaint. Thus if the Board were to decide this Complaint prior to CF

¹ To the extent necessary under the Board's rules, CF Industries seeks a waiver to file this response to Kaneb's opposition to CF Industries' intervention. This response will clarify the record and respond to important (incorrect) allegations contained in Kaneb's opposition.

² Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb").

Industries' Complaint, it is possible that CF Industries may not have its voice heard on a narrow, yet important, issue that directly affects CF Industries' interests and its existing rate prescription.

Moreover, Dyno Nobel has raised discrimination claims in its Complaint. Discrimination claims, by their nature, are about how to allocate costs or differentiate rates between shippers. A finding of discrimination in this case could require Kaneb to change its allocation of costs or rates among its shippers so as to address Dyno Nobel's concerns. This, in turn, could lead to future rate changes for other shippers such as CF Industries. The Board has previously allowed parties to intervene with much less of an interest. *See Union Pacific Corp, et al.*, 1996 WL 239448 (I.L.C.) (May 9, 1996) (allowing party to intervene despite admission that it had no interest in underlying merger, but had an interest in the conditions requested by another party to the case).

Notwithstanding CF Industries' satisfaction of the Board's intervention standard, on August 13, 2003, Kaneb opposed CF Industries' petition to intervene, claiming: (i) CF Industries' petition is procedurally deficient because no party has requested modified procedures;³ (ii) CF Industries' interests are protected because it has filed its own complaint in another proceeding;⁴ (iii) CF Industries' interests are not the same as Dyno Nobel's;⁵ and (iv) CF Industries' participation will "unnecessarily complicate and delay" this proceeding.⁶ None of these "reasons" withstand scrutiny.

³ Opposition of Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. to Petition to Intervene at 1.

⁴ *See id.* at 2.

⁵ *See id.* at 3.

⁶ *See id.*

First, before petitioning to intervene in this proceeding, CF Industries contacted the Board's staff to inquire about the process for intervening. The Board's staff stated that all of its cases are heard under modified procedures and those rules apply. CF Industries simply followed the Board's rules. Kaneb's interpretation of the Board's regulations governing interventions, however, would deny affected parties the ability to intervene in cases unless the complainant specifically requested "modified procedures." If the Board were to accept Kaneb's strained interpretation, it could result in Board decisions that severely impact parties other than the complainant and the defendant, without giving those third parties a chance to be heard.

Second, Kaneb is correct that CF Industries has filed its own complaint. And, as discussed above, that is one reason why CF Industries is intervening in this proceeding. CF Industries must ensure that any resolution, settlement, or outcome of *this* proceeding does not impact *CF Industries'* Complaint. To the extent that CF Industries' Complaint raises similar issues as Dyno Nobel's Complaint, CF Industries has a stake in both proceedings, and therefore it should be allowed to participate in this docket even though it has filed its own complaint.

Third, the fact that both Dyno Nobel and CF Industries may have different interests only strengthens the need to grant CF Industries' petition to intervene, because this shows that Dyno Nobel cannot adequately defend or protect CF Industries' interests and that CF Industries must be able to participate in order to protect its own interests. The discrimination issue discussed above is the best example of why these differing interests support allowing CF Industries to intervene.

Fourth, despite Kaneb's protestations, allowing CF Industries to intervene and participate in this proceeding will not "unnecessarily complicate and delay this case." CF Industries' petition to intervene did not seek to expand the scope of this proceeding, and thus CF Industries

does not understand how its participation would “unnecessarily complicate” this case. Nor has CF Industries done anything that would delay this proceeding. Indeed, CF Industries will accept the procedural schedule recently agreed to by the parties, including the provisions relating to third party discovery. To the extent that CF Industries’ participation could require additional discovery (which Kaneb cites as a possible cause for delay), that only serves as evidence that CF Industries’ participation in this case is necessary and justifiable because CF Industries’ interests are directly impacted by this Complaint. As such, it is imperative as a matter of due process that CF Industries be allowed to participate fully.

Therefore, CF Industries respectfully requests that the Board accept this answer to Kaneb’s opposition to CF Industries’ petition to intervene, and grant CF Industries’ August 1, 2003 petition to intervene in the captioned proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell F. Hertz", written over a horizontal line.

Mitchell F. Hertz
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Counsel for
CF Industries, Inc.

Dated: September 2, 2003

CERTIFICATE OF SERVICE

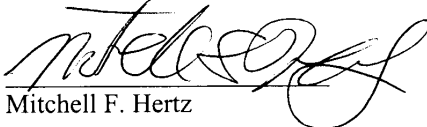
I hereby certify that I have this 2nd day of September, 2003, caused a copy of the foregoing Answer of CF Industries, Inc. to be served upon (i) Complainant Dyno Nobel Inc. and (ii) Defendant Kaneb Pipe Line Partners, L.P., by first-class mail, addressed as follows:

For Dyno Nobel Inc.:

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Mitchell F. Hertz